

April 13, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204E
Washington, DC 20554

RECEIVED

APR 13 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Proposed Global Venture Between AT&T Corp. and
British Telecommunications plc, IB Docket No. 98-21

Dear Ms. Salas:

AT&T Corp. and British Telecommunications plc announced their plans for an international services joint venture ("Global Venture") on July 26, 1998. As demonstrated in Public Interest Statement filed with the pending Section 214 and license assignment Applications, the Global Venture promises substantial public interest benefits through increased competition and innovation in the provision of international services, including global corporate communications services. Two weeks ago, the European Commission ("EC"), after an "in-depth" inquiry, approved the Global Venture. The EC confirmed what Applicants have previously shown in their detailed submissions here: the provision of global communications services to multi-national corporations ("MNCs") is a "dynamic market" populated by "a number of competitors" as well as "a substantial number of potential competitors." See March 30, 1999 EC Press Release ("EC Press Release") (copy attached).

To assure that the Commission can approve the pending Applications as expeditiously as possible, Applicants are submitting this letter to respond to contrary assertions made by Cable & Wireless plc ("C&W") in its February 17, 1997 Reply Comments ("*C&W Reply*") and in *ex parte* meetings with the Commission's staff. The *C&W Reply* makes a series of unsupported claims that the Global Venture will somehow undermine the intense existing competition to supply global services to MNCs. For the reasons set forth in Applicants' previous submissions and reiterated in further detail in this letter, C&W's contentions are baseless.

C&W claims that "it is clear that the elimination of competition between AT&T and BT in the MNC market would seriously undermine the competitiveness of that market." *C&W Reply* at 9. Tellingly, C&W does not support this claim with a single reference to any actual market data. Instead, C&W offers only a series of unsubstantiated – and untrue -- assertions that it urges the Commission to accept on faith. More fundamentally, C&W's assertions raise essentially irrelevant side disputes over such matters as whether the number of current global services suppliers is "only" five or more than a dozen, whether these suppliers compete for the business of 500 "truly global" MNCs or the tens of thousands of enterprises with significant transborder

telecommunications needs, and how large an initial share of this business the Global Venture is likely to obtain. Resolution of these “disputes” simply has no pertinence to the only relevant question before the Commission: whether the Global Venture will have any ability and incentive to impede *competition* and harm the interests of *consumers* (as opposed to those of C&W as a competitor). On that score, both the un rebutted record evidence and the Commission’s own prior decisions firmly establish that the Global Venture will have no such ability. As the Commission has repeatedly recognized, no firm can exercise market power over sophisticated large business customers where, as here, other strong carriers have ready access to capacity and other inputs required to offer those businesses competing services.

Nonetheless, for the convenience of the Commission, Applicants briefly address C&W’s principal assertions and catalogue the evidence that refutes them. For example, C&W falsely contends that each of the joint venturers (AT&T and BT) is currently the other’s principal global services competitor, and that the Global Venture will thus eliminate substantial existing competition. Applicants explained why that is not true both in their November 10, 1998 Public Interest Statement (“*Pub. Int. Stmt.*”) and in their February 17, 1999 Reply Comments (“*Applicants’ Reply*”). In short, neither AT&T nor BT has anything close to global network coverage today. For that reason, both companies (like other suppliers of global services to MNCs) have typically relied on alliances with other carriers – *e.g.*, World Partners in the case of AT&T and Concert in the case of BT, *see Pub. Int. Stmt.* at 13-14 -- to provision global services to MNCs. Not surprisingly, in marketing these services AT&T has focused its efforts in North America, and BT has focused its efforts in Europe. Thus, AT&T, as the distributor of World Partners global services in the United States, for example, almost never finds itself in direct head-to-head competition with BT to supply the global services requirements of U.S.-based MNCs. Rather, the competing bidders generally include (among many others) MCI, Concert’s original U.S. distributor. This intense head-to-head rivalry between AT&T and MCI will continue as the Global Venture competes with the new MCI WorldCom. Indeed, providing a strengthened competitor to MCI WorldCom, which has a significant headstart in developing a global IP-based network, is among the more important public interest benefits of the Global Venture. *See Pub. Int. Stmt.* at 14; *Applicants’ Reply* at 13, 24-25.

Before the Global Venture, each of the three largest U.S. carriers (AT&T, MCI, and Sprint, the North American distributor of Global One services) was associated with a separate international alliance. The same will be true after the Global Venture is consummated. Thus, as Applicants have explained, the Global Venture is properly viewed as a reshuffling of existing alliances, not a combination of two head-to-head competitors. *See Pub. Int. Stmt.* at 12-14, 19; *Applicants’ Reply* at 18 (“AT&T is exiting its informal alliances with other European carriers and establishing a venture with BT instead. Similarly, now that MCI has abandoned BT and merged instead with WorldCom, BT is obtaining a different U.S. partner”).

In this regard, it is critical to recognize that Concert, launched by MCI and BT at the beginning of 1995, *never* existed without a strong U.S.-based joint venture

owner/distributor. In *BT/MCI II*, the Commission held that BT, on its own, was not then and was not likely to become a significant competitor for U.S.-originating international services, either to multinational customers or in the mass market.¹ Since that decision was issued, actual experience has demonstrated that this factual conclusion continues to be correct. Thus, when it became clear last year that the long-term interests of MCI and Concert were no longer consistent, Concert appointed BT North America ("BTNA") and, shortly thereafter, AT&T, as additional non-exclusive U.S. distributors of Concert services.² Notwithstanding powerful incentives and determined efforts, BTNA, with its limited U.S. distribution presence, has, since last September, won less than 5 percent of Concert's new U.S.-based customers.

In these circumstances, C&W's focus on "the elimination of competition between AT&T and BT," *C&W Reply* at 9, is untenable. It is also irrelevant. Pro-competitive joint ventures often eliminate *some* actual or potential competition between the joint venturers. As the Commission, other regulators, and the courts have consistently recognized, that is entirely unobjectionable so long as the relevant markets remain highly competitive.³ And, the global corporate communications services market unquestionably *will* remain highly competitive. Indeed, if anything, it should become *more* competitive, because the Global Venture will be far more effective in meeting promptly the IP-based competition from MCI WorldCom and others than either of the venture partners could be alone.

C&W complains that "only [] a 'handful'" of effective competitors will remain. *See C&W Reply* at 9. As the Commission has held, however, a "handful" of competitors is more than adequate to assure competitive market outcomes where, as here, customers are highly sophisticated repeat players that employ outside consultants, in-

¹ *Merger of MCI Communications Corp. and British Telecommunications plc*, 12 FCC Rcd 15351, 15400-402 (1997) ("*BT/MCI I*").

² Prior to September 15, 1998, MCI was the *exclusive* distributor of Concert services in the U.S. BT, including its U.S. arm BTNA, was not permitted actively to approach customers in the US, and could make only "passive" sales (*i.e.*, sales when a customer specifically came to BTNA rather than MCI) of Concert services in the U.S. On September 14, 1998, the merger of WorldCom and MCI was consummated, MCI WorldCom bought out BT's shares in MCI, and BT bought out MCI's shares in Concert. On the following day, MCI WorldCom became a non-exclusive distributor of Concert services in the U.S.

³ *See, e.g.*, Memorandum Opinion and Order, *In re NYNEX Corporation And Bell Atlantic Corporation For Consent To Transfer Control Of Nynex Corporation And Its Subsidiaries*, 12 FCC Rcd. 19985 (1997); Declaratory Ruling and Order, *In re Request of MCI Communications Corporation British Telecommunications plc*, 9 FCC Rcd. 3960, 3970 (1994).

house experts, intensely competitive bidding processes and multi-sourcing.⁴ In particular, the Commission so held in 1997 when it approved the BT/MCI merger notwithstanding a finding that there were only “a handful of major competitors world-wide in the global seamless services market.” *BT/MCI II*, 12 FCC Rcd. at 15388 (identifying as “major” competitors the three competing international alliances in which AT&T, MCI and Sprint participate). The Commission noted then that additional alliances were likely to emerge, *see id.*, and events since the Applications were filed confirm that competing global services alliances – including Qwest/KPN, Global Crossing/Frontier, and GTS/Esprit – continue to form and evolve at a remarkable pace.⁵

In all events, whatever the circumstances in 1997, C&W’s claim that the global corporate communications services market today is populated by only a handful of competitors is demonstrably untrue. Applicants have previously identified well over a

⁴ See, e.g., Tom K. Willard, *Antitrust Enforcement: Department Of Justice, FTC, State Attorneys General, And Private Parties*, Practising Law Institute, Corporate Law and Practice Course Handbook Series (1994) (“the risk of anticompetitive harm . . . will be small even if the merger would eliminate one of a handful of competitors in a highly concentrated product market [if buyers] elect to engage in large, multi-unit/multi-year procurements and employ a bidding mechanism to select a single (or primary) supplier”); United States Department of Justice and Federal Trade Commission Horizontal Merger Guidelines (1992; revised in 1997) at n.15 (“Where all firms have, on a forward-looking basis, an equal likelihood of securing sales, the Agency will assign firms equal shares”); *United States v. Baker Hughes, Inc.*, 908 F.2d 981 (D.C. Cir. 1990) (noting that “the sophistication and bargaining power of buyers play a significant role in assessing the effects of a proposed transaction,” and refusing to enjoin a transaction in part because buyers often required multiple, confidential bids); *see also* Affidavit of John Finnegan (attached to *Applicants’ Reply*).

⁵ See, e.g., Press Release, “Global Crossing and Frontier Announce \$11.2 Billion Merger” (March 17, 1999) (http://www.globalcrossing.bin/pr_031799.html); *EQUANT Buys Telecom Arm of France’s Rhone-Poulenc*, Telecommunications Reports (April 27, 1998) <http://www.tr.com/tronline/tr/1998/tr8017/tr801706.htm>; Voice & Data, *GTS and Esprit Telecom to Merge*, Globe Watch (Jan. 1999) <http://www.voicendata.com/jan99/gwatch.html>; Company News Press Releases, *GTS Completes Acquisition of NetSource Europe ASA*, (Dec. 2, 1998) <http://www.gtsgroup.com/news/acqnetcourse.html>; *Qwest, Dutch Carrier KPN Form IP Network Venture*, Telecommunications Reports (Nov. 23, 1998) <http://www.tr.com/tronline/tr/1998/tr8047/tr804719.htm>; Press Release, *STAR Telecom Announces Record Revenues and Net Income For Fourth Quarter and Year at 2* (March 1, 1999) (STAR completes purchase of PT-1 Communications); Press Release, *STAR Telecom and Worldport Communications Sign Letter Of Intent For Pan-European Fiber Capacity at 1* (Feb. 22, 1999) <http://www.startel.com/worldport1.html>; Press Release, *Teleglobe Reports 32% Increase in Third Quarter Earnings Per Share Total Traffic Up 25%* at 2-3 (Nov. 5, 1998) (Teleglobe and Excel Communications complete merger).

dozen competitors in addition to the AT&T, MCI, and Sprint alliances. Although neither Applicants nor anyone else has access to the information that would be needed to conduct an exhaustive analysis of each competitor's market position, the publicly available data provided in Applicants' previous filings relating to these companies' networks, MNC customers and financial results leave no room for doubt that these additional suppliers are competing quite successfully to serve MNCs' global services needs. *See Pub. Int. Stmt.* at 19-21; *Applicants' Reply* at 12-14, 16-17.⁶

Indeed, even C&W must acknowledge that there are a vast array of firms participating actively in the MNC market. C&W is, in the end, thus reduced to relegating these firms to "non-major" status, which, in C&W's view, applies to any supplier that does not "offer [] most or all of the global services on a facilities basis through a meshed network architecture . . . in a single bid." *C&W Reply* at 7. But if that were the applicable test, *all* the world's suppliers would be "non-major," for neither the Global Venture, MCI WorldCom, nor Global One would satisfy C&W's definition of a "major" supplier. Further, C&W is simply wrong in asserting that carriers with limited facilities and geographic scope cannot offer MNCs "comparable savings."⁷ MNCs are careful shoppers who take full advantage of the many competitive alternatives that are presently available and who routinely seek and accept bids from carriers C&W would have the Commission ignore. That should be evident from the "non-major" suppliers' reported revenues (which are growing at extraordinary rates and obviously represent *some* customers) and their inclusion in the few available industry market studies,⁸ and it is confirmed by the actual experience of AT&T and BT. In this regard, although MNCs do not generally disclose to one potential supplier a list of other potential suppliers who have been asked to submit bids, Applicants' informal review of their own records confirms that in the past year alone one or both of them have competed against Qwest, KPN, Level

⁶ Considerable information about many of the global services suppliers is available on their corporate websites. *See, e.g.,* http://www.ac.com/services/communications/comm_home.html; <http://www.eds.com/>; <http://www.geis.com/>; <http://www.gtsgroup.com/>; <http://www.infonet.com/>; <http://www.qwest.net/press/kpnqwest.html>; <http://www.psi.net/>; <http://www.telecomitalia.it/english/index.html>; <http://www.teleglobe.com/>; <http://www.telegroup.com/>; <http://www.ixnet.com/network.html>; <http://www.level3.com/>; <http://www.telefonica.es/foreign/foreign.htm>; <http://www.igcofga.com/index.shtml>; <http://www.pgexch.com/>; <http://www.primustel.com/>; <http://www.colt-telecom.com/>.

⁷ Some formidable competitors, including Andersen Consulting and EDS, have relied *primarily* on facilities owned by others. And, so far as Applicants are aware, *every* supplier of MNC services buys or leases from other carriers to some degree.

⁸ *See, e.g., The Global Market For Managed Network Services 1998: The Current Market* (CIT Research) at Chapter 5, pp. 140-41 (listing 22 service providers operating in the NAFTA region with global reach and 30 others with smaller service areas); *id.* pp. 163-65 (listing 26 service providers operating in Europe with global reach and 53 others with smaller service areas); *id.* pp. 184-85 (listing 12 service providers operating in Asia with global reach and 47 others with smaller service areas).

3, Compuserve, Infonet,⁹ EDS, Andersen Consulting, GEIS, KDD, Saturn Global Network Services, Hermes, Telia, Hong Kong Telecom, New Zealand Telecom, Telefonica, Teleglobe, PSINet, Siemens, Stratos, Swift, Telecom Italia, Primus, COLT, and Energis (and consortia of these and other carriers), among others (and in addition to Global One, SITA/Equant and C&W), for sales of global corporate communications services. Suppliers that do not qualify for C&W's handful of "relevant" competitors are not only routinely invited to bid, they win contracts. The limited information available to AT&T and BT confirms that even with respect to the largest MNC customers (*e.g.*, members of the Fortune Global 500), there are well over a dozen different suppliers that serve as the "primary" global services supplier to one or more of these MNCs.

Of course, a focus only on competitors who serve as "primary" suppliers to MNCs undoubtedly understates the intensity of existing competition and the role played by newer and smaller carriers and alliances. Applicants have provided the Commission with sworn testimony that "multi-sourcing," which allows customers to "directly compare the quality and cost" of two or more service providers "is widely employed by MNCs." *Finnegan Aff.* at ¶¶ 4, 9.¹⁰ C&W has offered *no* contrary record evidence. The prevalence of this multi-sourcing partly explains why smaller, newer and niche carriers have been so successful – an MNC can take a chance on a "non-major" carrier without significant reliability or quality risk by awarding that carrier a short-term contract to supply a portion of the MNC's global services requirements. If the new supplier performs well, the MNC can then consider expanding that supplier's role. In short, smaller carriers with continental, national, and niche network service capabilities can and do compete to offer portions (or, through alliance bidding, all) of an MNC's global communications needs.

The same evidence refutes C&W's unsupported assertion that there is some undefined subgroup of the largest "truly global" MNCs that can be supplied only by AT&T, BT, and the other members of the "handful." Even a myopic focus solely on the Fortune Global 500 companies would confirm not only that competition among the AT&T, MCI, and Sprint alliances for those customers' business is intensely competitive - - and itself more than adequate to assure competitive market outcomes -- but that those customers also seek bids from and award contracts to smaller carriers and alliances.¹¹

⁹ Infonet is a privately held enterprise owned by a number of foreign carriers. See <http://www.infonet.com/corporate.html>. A majority interest is held by Unisource shareholders Telia, KPN Telecom and Swisscom. See <http://www.unisource.com/about/default.htm>. AT&T has no ownership interest in Infonet.

¹⁰ More specific information relating to particular customers' practices is obviously proprietary, but AT&T and BT, based on their actual experiences in selling global services to MNCs, assure the Commission that MNC customers routinely purchase global services from multiple carriers and alliances, dividing the business by region, type of service, and even among different suppliers of the same service in the same region.

¹¹ For example, Applicants provided three illustrative lists of large MNCs served by Global One, WorldCom, and Equant. Most of those companies are Fortune Global 500

C&W's assertion also ignores the economic realities of both supply and demand. On the supply side, a global services supplier employs the *same* facilities and capabilities, regardless of the size of the MNC or whether it counts itself among the Global 500 (and suppliers will continue to do so as IP networks are deployed). On the demand side, Global 500 and smaller MNCs alike buy and utilize managed data and voice services with the same basic features and functionalities whether provided by WorldPartners, Concert or any of the many other suppliers of those services. Indeed, the facts that AT&T and BT together currently sell global services to thousands, not hundreds, of MNCs,¹² and that the Global Venture has publicly announced that its services will be marketed to the full range of MNCs (numbering in the tens of thousands), demonstrates that there is no basis to fabricate such artificial market segments.¹³

companies, including: American Express, Bayerische Verinsbank, BMW/Rolls Royce, BP Oil International, British Airways, Chase Manhattan Bank, Commerzbank AG, Credit Lyonnais, Delta Air Lines, EDS, Ericsson, Generale de Banque, Hewlett Packard, ING Bank, JP Morgan, Lufthansa, Mercedes-Benz, P&O, Rhone-Poulenc, Rockwell, Samsung, Shell, Societe General, Swiss Re, UBS, Unilever, Volvo, and Xerox. See *Applicants' Reply* at 16-17. Additional example MNC customer lists are also available on many carriers' web pages.

¹² The "250 accounts" referenced on the Global Venture's web page include only MNCs in three target industries that will be served directly by the Global Venture. The Global Venture's distributors, including AT&T and BT, will market global services to the other thousands of MNCs around the world. See <http://www.att-bt-globalventure.com/news/index.html>. See also *Applicants' Reply* at n. 32 (citing public sources concluding that there are more than 40,000 transnational corporations).

¹³ C&W misleadingly claims that "global reach" in the form of "bilateral relationships" with foreign correspondents gives AT&T and BT "greater opportunities" to provide global services to MNCs. See *C&W Reply* at 8. As the Commission has held, many of AT&T's U.S.-based competitors have substantially the same "reach" as AT&T (as do many foreign carriers). See Order, *In re Motion of AT&T Corp. to be Declared Non-dominant for International Service*, 11 FCC Rcd. 17963, 17981 at ¶ 50 (1996), *recon.*, 13 FCC Rcd. 21501 at ¶ 18 (1998). More importantly, a global services supplier does not typically rely upon conventional correspondent relationships, but instead enters into more particularized arrangements or acquires (through IRUs or otherwise) access to the underlying international facilities at the foreign end. In this regard, it is worth noting that AT&T has arrangements to provide the frame relay services typically demanded by MNCs to only about 40 countries, and that most of those arrangements are through its alliances with foreign carriers. Compare <http://equant.com/home.htm> ("Equant, the world's leading provider of seamless international data network services to multinational businesses today achieved another industry first by making its frame relay service available in over 100 countries worldwide"). The other "advantages" C&W attributes to AT&T and BT are equally ephemeral. See *C&W Reply* at 8-9. Applicants have previously explained why other competitors are in no way disadvantaged by AT&T's or BT's domestic market positions, reputations, track records and "familiarity" with

Finally, C&W predictably finds fault with the market definition referenced in Applicants' submissions. As Applicants' explained in their January 19, 1999 Letter,¹⁴ however, their "global corporate communications services" definition has its genesis in the Commission's own recent decisions, which have consistently analyzed the "global seamless services" market.¹⁵ Applicants have employed their slightly different label only because undue emphasis on "seamlessness" and "one-stop shopping" can, as the *C&W Reply* illustrates, foster confusion regarding how the MNC business actually operates. Many MNC customers (big and small) value "seamlessness" (for reliability) and "one-stop shopping" (for simplified contracting, billing and service monitoring), but they just as certainly value multiple sourcing (for security, reliability, and the fostering of competition among suppliers), price, quality, and service. Each MNC weighs these and other factors differently according to its own individual needs, and balances them to determine which single supplier or mix of suppliers best meets those needs. Plainly, it would be inappropriate to define the MNC market rigidly, as C&W urges, to require "one-stop shopping" and "seamlessness" (even ignoring that *no* carrier can offer the latter feature on a single wholly-owned end-to-end global basis to every customer today). Rather, customers may (and do) multi-source by region or product line and still seek one-stop-shopping/seamlessness with respect to each region or product sourced. Accordingly, popular press accounts that customers want "one-stop-shopping" should not be equated with some inflexible customer demand for a single "super-network" that carries end-to-end simultaneously all of the customer's voice, data, intranet, extranet, and other traffic.

customers – whatever the importance of such attributes in serving the mass market, large corporate customers choose the suppliers that offer them the best combination of quality, capabilities and price. See *Applicants' Reply* at 8-10, 15-17. In this regard, C&W's suggestion that neither it nor the many other large corporations that supply global services have the "capability" or "sufficient personnel" even to bid for MNC business is absurd. Finally, C&W has it exactly backwards in claiming that the fact that AT&T and BT have older networks that support "older protocols" gives them an unspecified advantage over competitors with more modern networks. As MNCs (and other customers) increasingly demand IP-based services, it is AT&T and BT that are at a disadvantage (and, indeed, are frequently not even asked by MNCs to bid on IP-based services). The need to overcome that critical disadvantage was among the primary motivations for the joint venture. Further, even customers that have not yet made the move to IP have not hesitated to switch their business to one of the many other carriers that support frame relay, X.25, ATM and other protocols. See, e.g., Affidavit of John Finnegan at ¶¶ 8-9 (attached to *Applicants' Reply*). See also carrier websites (listing service offerings).

¹⁴ Letter from M. Schneider and D. Lawson, AT&T Counsel, to M. Salas, Secretary, FCC (Jan. 19, 1998) ("Jan. 19, 1999 Letter").

¹⁵ See Jan. 19, 1999 Letter at 3 (citing *BT/MCI II*, 12 FCC Rcd. At 15377).

No such networks are available today,¹⁶ and, if they were, large MNC customers have, as noted above, stated that they do not generally *want* to be dependent on a single carrier.¹⁷

It is equally important to recognize that “global” does not mean that the market is limited to customers that need service everywhere. There are few (if any) such customers. Rather, the word “global” in global corporate communications services refers to customers that desire service anywhere they are located (to the extent practical) whether they have two locations or 1000. In sum, Applicants have appropriately analyzed the global corporate communications services market consistent with the competitive and economic realities and the Commission’s prior precedents.

Of course, market definition and share analysis are typically as much art as science, particularly where, as here, the markets in question are dynamic and evolving and only some verifiable market data is publicly available. C&W seeks to take advantage of the fact that in the face of such uncertainty, nitpicking is possible with any market share study. As C&W’s own failure to produce a shred of competing analysis demonstrates, however, such criticisms are as difficult to substantiate as they are to disprove with certainty. Here, of course, the available public information suggests a combined market share so low that one would have to identify very substantial errors to raise a market *share* issue warranting additional market *power* analysis in *any* circumstances.¹⁸ And, as the EC recently held, the competitive dynamic of *this* market is

¹⁶ To the extent that any carriers come close to possessing such a network, those carriers are Equant, followed by C&W and MCI-WorldCom, not AT&T and BT.

¹⁷ Nor is it true that MNCs are likely to change course and suddenly shun any supplier that cannot offer seamless “one-stop shopping” over the supplier’s own facilities. See *C&W Reply* at 6-7. As one leading industry newsletter recently reported: “more than half of large businesses surveyed don’t want one-stop shops, and most have already chosen multicarrier relationships. Multinational corporations’ fears about putting all of their eggs in one basket will inhibit the success of . . . one-stop-shopping plans.” See Forrester Research, *Telecom Strategies*, “MCI WorldCom’s Encore” at 5 (December 1998).

¹⁸ Applicants pointed out in their Jan. 19, 1999 Letter that the CIT and McGraw Hill studies on which the 10 percent share is based improperly exclude self-provision in the denominator and include AUCS/WorldPartners and Concert sales not appropriately attributable to ATT and BT in the numerator. Both errors would tend to inflate the AT&T/BT share. To be sure, there may be errors that cut the other way. For example, AT&T’s proprietary internal estimate of its own sales is higher than the CIT estimate. But even assuming that CIT did not underestimate other carriers’ revenues to the same (or an even greater) degree, the calculated combined share on the CIT base would still be less than 10 percent. Similarly, even if one simply lumped CIT’s estimates of IBM revenues with the CIT estimates of AUCS/WorldPartners and Concert revenues, the combined share would be only about 13.5 percent. That would grossly overstate the relevant share given that the IBM accounts transferred to AT&T (and, it is important to recognize that the largest accounts remained with IBM) are largely domestic and involve

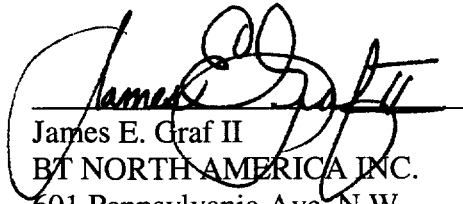
such that there would be no plausible market power concerns even if Applicants' public data-based market share estimate were low *by a factor of three to five*. Positing a "worst-case" market share figure of 30-50%, the EC nonetheless approved the Global Venture, recognizing that in a "dynamic" market with large business customers, "a number of competitors," and "a substantial number of potential competitors," even a carrier with a share that large would have no ability to effect price or output. See EC Press Release at 1.¹⁹ That is precisely the approach the Commission has consistently taken in similar situations. As the Commission has explained, where, as here, there are multiple strong competitors competing for the business of sophisticated large business customers, no carrier can conceivably impede competition absent control over the cable and other facilities used to provide those services. See Jan. 19, 1999 Letter at 5; *Applicants' Reply* at 10-12 (citing *BT/MCI II* and *MCI WorldCom Merger Order*). C&W does not even attempt to argue that Applicants have any such bottleneck control. In fact, Global Crossing has just announced plans to deploy Atlantic Crossing 2, a 2.5 terabit-per-second cable that has 25 times the current capacity of all existing trans-Atlantic cables. See Press Release, "Global Crossing To Add New 2.5 Terabit-Per-Second Atlantic Cable Huge Capacity, \$500-Million Cable Will Meet Soaring Demand in Europe," (March 24, 1999) (http://www.globalcrossing.bin/.pr_032489html).

For all of these reasons, the Commission should summarily reject C&W's baseless claims, grant the requested authorizations, and permit Applicants to commence expeditiously the development and provision of new, competitive international facilities and global services.


higher-level managed services built on frame relay and other lower-level services purchased from other carriers, including AT&T. See also Jan. 19, 1999 Letter at 1-3 (explaining that transferred IBM accounts reflect on average only tens of thousands of dollars of purchases per year and that IBM owns no transport facilities). Finally, it would plainly be inappropriate to use the Global Venture's press release forecast of more than \$6 billion in revenue for the two global businesses in the first year of operation as a basis for estimating global MNC services shares. That year 2000 *forecast*, which is obviously aspirational, includes not only typical global corporate communications services, but also projected sales of other services to MNCs, including domestic services and services typically purchased by carriers, such as IDD and IPLCs. Further, the forecast assumes a very large annual market rate of growth between 1998 and 2000 (and thus a more than \$37 billion market size as compared to the \$13.9 billion assumed by CIT).

¹⁹ The EC's "worst-case" share estimates reflect extremely flawed analyses based on informal polls of only six carriers (including AT&T and BT) and an unspecified number of customers and a third party's unverified analysis of the telecoms expenditures of 200 selected customers. Applicants strongly believe that the results produced by those methodologies significantly understate the size of the relevant market and significantly overstate the positions of Applicants in that market. Nonetheless, as noted above, the critical point is that the EC properly determined that the Global Venture could not harm competition even with a relatively high share given the high degree of current and potential competition.

Respectfully submitted,



James E. Graf II
BT NORTH AMERICA INC.
601 Pennsylvania Ave, N.W.
Suite 725, North Building
Washington, DC 20004



Lawrence J. Lafaro
AT&T CORP.
295 Maple Avenue
Basking Ridge, NJ 07920

IP/88

Brussels, March 30th, 1999

Commission clears BT/AT&T joint venture with conditions in the UK market

The European Commission has approved the creation of a joint venture between British Telecommunications plc (UK) and AT&T Corp (US). The new company will provide global telecommunications services to multinational companies and international carrier services to other telecommunications companies. The proposed operation was approved after certain co-ordination issues between BT and AT&T in the UK had been resolved through undertakings submitted by AT&T. This is the first decision taken after a second-phase enquiry which has involved the assessment of co-ordination effects under the new Article 2(4) of the Merger Regulation that entered into force on 1st March 1998.

The decision is the formal conclusion of an in-depth inquiry which the Commission started on 3 December 1998, following its preliminary investigation after the notification of the operation on 3 November 1998. The Commission examined in-depth four major areas where the operation could possibly lead to a creation or strengthening of a dominant market position: the area of global telecommunications services for multinational corporate customers, international carrier services, telecommunications services on the UK-US route and certain international voice telephony services in the UK. Furthermore, it investigated possible co-ordination effects of the proposed joint venture in the UK between ACC, a wholly-owned subsidiary of AT&T, between BT and Telewest, in which AT&T through TCI holds a 22% stake and regarding the distribution of AT&T/Unisource services in the UK.

The Commission acknowledged that the current state of competition in these international markets offered the necessary environment to enable the venture to go forward. On the global telecommunications services market, the parties have a combined market share of between 30-50%. This is a dynamic market, and there are a number of competitors such as MCI WorldCom, GlobalOne and Equant present on the market as well as a substantial number of potential competitors. On the international carrier services market, it appears that the parties' combined share of total international bilateral traffic is around 18% with an increasing number of competitors, both at pan-European and global levels, part of them due to the availability of increasing amounts of capacity at a fast decreasing cost. On the UK-US route, the parties have about half the traffic flows in either direction but less than 20% of the capacity, with plentiful additional capacity available which is falling in price thus permitting the entry of new competitors on this already very competitive route. As for the UK market, no evidence of the creation or strengthening of a dominant position could be found that would have resulted from the creation of the joint venture.

However, three co-ordination concerns were identified on UK markets. Apart from those related to ACC and Telewest, a third one appeared in the course of the in-depth investigation, in relation with the distribution of AT&T/Unisource services in the UK. AT&T have offered undertakings which resolve all of these concerns.

These undertakings are the divestment of ACC UK, the creation of a greater structural separation between AT&T and Telewest and the ability for another distributor apart from AT&T UK to be appointed to distribute AUCS services in the UK, as AT&T UK will be wound up. Subject to full compliance with these undertakings, the Commission therefore declared the concentration compatible with the common market.

The Commission's approval of this operation makes it in particular possible for the new BT/AT&T joint venture to self correspond on the UK-US route. In the light of this decision and of its findings on the competitive state of these international markets, the Commission will also review current submissions concerning the lifting of conditions attached to other decisions it has taken in this area, in particular the Atlas/GlobalOne decisions, in order to further foster competition.

Background

BT is currently the fifth biggest telecommunications operator world-wide by turnover. Its principal activity is the supply of telecommunications services and equipment in the UK. BT is also active internationally, notably in Europe through Concert (wholly owned subsidiary) and other European joint ventures such as Cegetel in France, BT-Viag in Germany, and Albacom in Italy.

AT&T is currently the second biggest telecommunications operator world-wide by turnover, and first US long distance telecommunications operator. AT&T is also active internationally, notably in the UK where it operates a group of wholly-owned subsidiary companies including AT&T Comms UK, and ACC Long Distance UK, a subsidiary of ACC Corp.. AT&T has also recently completed its merger with Telecommunications, Inc (TCI), a US corporation that owns approximately 22% in Telewest Communications, a UK cable company offering television channels, telephony services, data communications services, and Internet access. AT&T currently has a share in AUCS (AT&T- Unisource Communications Services). It is also a member of the WorldPartners alliance which is made up of AT&T, KDD, Singapore Telecom, Unisource and Telstra. Both AUCS and WorldPartners provide global telecommunications services to multinational corporations that AT&T distributes in the US, as well as in the UK for AUCS services.

The parent companies will transfer the bulk of their international telecommunications facilities and other assets, including BT's existing Concert activities, to the joint venture. The joint venture will in particular have transferred to it the parents' existing correspondent contracts, submarine cable ownership, cable landing stations and Indefeasible Rights of Use (IRUs) interests in cables. The joint venture will initially target large multinational companies in the financial services, petroleum and IT sectors. The parent companies, and other distributors, will distribute products to other multinational companies.

The notifying parties have informed the Commission that let alone the divestiture of ACC UK, AT&T intended to close down its AT&T UK subsidiary, and would withdraw its interests in AUCS, World Partners, and Arcor (Germany), at the end of a transitional period.

The operation was notified on 3 November 1998. Following a preliminary enquiry, the Commission adopted a decision to launch an in-depth enquiry on 3 December 1998, after it had concerns in the following areas¹:

¹ See IP/98/1065 of 4.12.1998.

BT GROUP LEGAL

30-MAR 1999 12:51

+0171 329 2117

BT BRUSSELS OFFICE

31/03 '99 14:58 NO.004 U4

32 2 23/1/02 P.05/05

- the parties' combined market position on the global market for the provision of global telecommunications services to large multinational companies, on that for the provision of international carrier services to other operators, and on the UK market for the provision of international voice telephony services on the UK-US route ;
- the effect of the creation of the joint venture leading to the possible creation or strengthening of a dominant position for certain telecommunications services in the UK.
- possible co-ordination effects of the proposed joint venture in the UK between ACC, a wholly-owned subsidiary of AT&T, and between BT and Telewest, in which AT&T through TCI holds a 22% stake.

The operation is still subject to approval by the US authorities.

TOTAL P.05

APR 02 '99 13:00 NO.003 P.04

ID:2022967138

ECONOMISTS INC.